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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/921,479

08/03/2001

R. Preston Mason

12915 P06

7261

26486

7590

02/02/2004

PERKINS, SMITH & COHEN LLP  
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EXAMINER

JONES, DWAYNE C

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 02/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/921,479

**Applicant(s)**

MASON, R. PRESTON

**Examiner**

Dwayne C Jones

**Art Unit**

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on the response of 14 OCT 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 39-97 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 39-97 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Due to the fact that there was a restriction placed on this application on November 1, 2002 with product claims and four (4) independent and distinct methods of using these claims, it is unclear from the record what new claims are elected. In addition, there are currently overlapping withdrawn claims with newly presented claims for new Groups I and II, as well as withdrawn claims from new Groups III and IV. Accordingly, in order to make the record clear, applicant is respectfully requested to elect a single Group of claims as delineated below.

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 39-49, and 93, drawn to a method of inhibiting cholesterol crystal formation, classified in class 514, subclasses 330 and 423+.
  - II. Claims 50-60, and 86-92, and 94-97, drawn to a method of increasing the NO production, classified in class 514, subclasses 330 and 423+.
  - III. Claims 61-70, drawn to a method of treating arterial and related heart disease, classified in class 514, subclasses 330 and 423+.
  - IV. Claims 72-83, drawn to a method of lowering blood pressure and systemic lipid concentrations, classified in class 514, subclasses 330 and 423+.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions I and (II, III and IV) are unrelated. Inventions are unrelated if it can be shown that they have different modes of operation, different functions, or different

Art Unit: 1614

effects. In the instant case the different inventions each of these groups have different modes of operation and effects and furthermore do not have to be performed together.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5. A telephone call to the attorney is not required where: 1) the restriction requirement is complex, 2) the application is being prosecuted pro se, or 3) the examiner knows from past experience that a telephone election will not be made, see MPEP Sect. 812.01.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

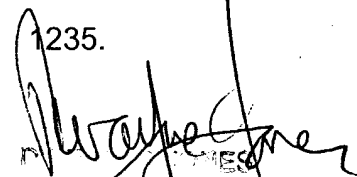
Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. C. Jones whose telephone number is (703) 308-4634 until about February 6, 2004 and then changes to (571) 272-0578. The examiner can normally be reached on Mondays through Fridays from 8:30 am to 6:00 pm. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on (703) 308-4725 until about February 6, 2004 and then changes to (571) 272-0584. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Art Unit: 1614

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

1235.

  
Tech. Ctr. 1614  
January 29, 2004